

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER TODD RUSCHHAUPT,

Plaintiff,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:21-cv-2388-TLN-KJN PS

FINDINGS AND RECOMMENDATIONS TO  
DISMISS

(ECF Nos. 6, 14.)

Plaintiff, a California state prisoner who is proceeding without counsel in this action, requests leave to proceed in forma pauperis (“IFP”).<sup>1</sup> (ECF Nos. 6, 14.) See 28 U.S.C. § 1915 (authorizing the commencement of an action “without prepayment of fees or security” by a person who is unable to pay such fees). Because the court lacks subject matter jurisdiction over this case, the undersigned recommends that the action be dismissed without prejudice, and that plaintiff’s motions to proceed in forma pauperis be denied as moot.

**Procedural History**

Plaintiff originally filed this action in the Northern District of California and sought leave to proceed IFP. (ECF Nos. 1, 6.) With the motion pending, the case was transferred to this district under 28 U.S.C. § 1391(b), based on plaintiff’s location within the Eastern District of

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<sup>1</sup> Actions where a party proceeds without counsel are referred to a magistrate judge pursuant to E.D. Cal. L.R. 302(c)(21). See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72.

1 California. (ECF No. 10.) Plaintiff then filed a First Amended Complaint (“FAC”) in this court,  
2 along with another motion to proceed IFP. (ECF Nos. 13, 14.)

3 Both IFP motions are identical, and the FAC expands upon the same underlying  
4 allegations of the original complaint. The court therefore treats the FAC as the operative  
5 complaint for screening purposes.

6 **Legal Standards**

7 Under the IFP statute, the court must screen the complaint and dismiss any claims that are  
8 “frivolous or malicious,” fail to state a claim on which relief may be granted, or seek monetary  
9 relief against an immune defendant. 28 U.S.C. § 1915(e)(2). Further, the federal court has an  
10 independent duty to ensure it has subject matter jurisdiction in the case. See United Investors  
11 Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004).

12 The court must dismiss a case if, at any time, it determines that it lacks subject matter  
13 jurisdiction. Rule 12(h)(3).<sup>2</sup> A federal district court generally has original jurisdiction over a  
14 civil action when: (1) a federal question is presented in an action “arising under the Constitution,  
15 laws, or treaties of the United States” or (2) there is complete diversity of citizenship and the  
16 amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a).

17 Federal courts lack subject matter jurisdiction to consider claims that are “so insubstantial,  
18 implausible, foreclosed by prior decisions of this court, or otherwise completely devoid of merit  
19 as not to involve a federal controversy.” Steel Co. v. Citizens for a Better Environment, 523 U.S.  
20 83, 89 (1998); Hagans v. Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter jurisdiction  
21 over claims that are “essentially fictitious,” “obviously frivolous” or “obviously without merit”);  
22 see also Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 549-50 (9th Cir. 2018)  
23 (noting that the “wholly insubstantial and frivolous” standard for dismissing claims operates  
24 under Rule 12(b)(1) for lack of federal question jurisdiction). A claim is legally frivolous when it  
25 lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A  
26 court may dismiss a claim as frivolous where it is based on an indisputably meritless legal theory  
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28 <sup>2</sup> Citation to the “Rule(s)” are to the Federal Rules of Civil Procedure, unless otherwise noted.

1 or where the factual contentions are clearly baseless. Id. at 327; Rule 12(h)(3).

2 Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & n.7  
 3 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is  
 4 to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it  
 5 appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31  
 6 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be  
 7 given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

### 8 Analysis

9 The FAC names as defendants former President Donald Trump, current President Joe  
 10 Biden, current Vice President Kamala Harris, Senator Dianne Feinstein, Microsoft CEO Brad  
 11 Smith, and Microsoft owners Bill and Melinda Gates.<sup>3</sup> (ECF No. 13 at 1, 2.) Plaintiff alleges  
 12 that he is “the sole test subject & blind participant” in Microsoft’s “bioengineering satellite  
 13 technology,” sanctioned by the U.S. government. (Id. at 2-3.) Plaintiff believes he was promised  
 14 a pardon and expungement for “23 ½ years en-utero upon having Microsoft’s satellite positioned  
 15 on [his] brain.” (Id. at 3.) He claims he is “having [his] rights violated” and requests “immediate  
 16 dialogue with the Biden Intelligence officials.” (Id.)

17 Plaintiff’s claim that the government is contracting with Microsoft to test satellite  
 18 technology on plaintiff’s brain is factually implausible, legally frivolous, and therefore should be  
 19 dismissed. See Neitzke, 490 U.S. at 327-28 (permitting dismissal of claims based on facts that  
 20 are clearly baseless, including those “describing fantastic or delusional scenarios”). While the  
 21 court is sympathetic to whatever plight plaintiff might be experiencing in confinement, the  
 22 allegations presented simply lack an arguable basis in fact, and there is no indication that they are  
 23 grounded in reality. See id. at 325.

24 Ordinarily, the court liberally grants unrepresented plaintiffs leave to amend. However,  
 25 because the record here shows that plaintiff would be unable to cure this problem through further

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26 <sup>3</sup> Plaintiff also filed a document docketed as a “Brief” in which he attempts to explain his reasons  
 27 for naming each of the defendants. (ECF No. 16.) Even if the court were to accept this document  
 28 as a supplemental pleading, the information contained therein only reinforces the court’s view  
 that this action is frivolous.

1 amendment of the complaint, the court concludes that granting leave to amend would be futile.  
2 Cahill, 80 F.3d at 339.

3 Instead, the action should be dismissed without prejudice—and without leave to amend—  
4 for lack of subject matter jurisdiction based on the utter implausibility of the allegations. See  
5 Citizens for a Better Environment, 523 U.S. at 89.


6 **RECOMMENDATIONS**

7 Accordingly, it is RECOMMENDED that:

- 8 1. The action be DISMISSED without prejudice, for lack of subject matter jurisdiction  
9 based on the frivolous nature of the claims asserted;  
10 2. Plaintiff's motions to proceed in forma pauperis (ECF Nos. 6, 14) be DENIED as  
11 moot; and  
12 3. The Clerk of Court be directed to CLOSE this case.

13 These findings and recommendations are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
15 days after being served with these findings and recommendations, plaintiff may file written  
16 objections with the court. Such a document should be captioned "Objections to Magistrate  
17 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections  
18 within the specified time may waive the right to appeal the District Court's order. Turner v.  
19 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir.  
20 1991).

21 Dated: February 2, 2022

22   
23 KENDALL J. NEWMAN  
24 UNITED STATES MAGISTRATE JUDGE  
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